

STATE OF SOUTH CAROLINA

(Caption of Case)

Certification of the Use of Universal Service Funds
pursuant to 47 C.F.R. §54.314 and
Telecommunications Act §254(e) CC Docket No. 96-
45

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 1997 - 239103847
ORIGINAL

RECEIVED
2008 JUL 11 9:16 AM
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

(Please type or print)

Submitted by: Scott ElliottSC Bar Number: 1872Address: 721 Olive StreetTelephone: 803-771-0555Columbia, SC 29205Fax: 803-771-8010

Other: _____

Email: sellott@elliottlaw.us

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input checked="" type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

ORIGINAL

ELLIOTT & ELLIOTT, P.A.
ATTORNEYS AT LAW
721 OLIVE STREET
COLUMBIA, SOUTH CAROLINA 29205
selliott@elliottlaw.us

SCOTT ELLIOTT

TELEPHONE (803) 771-0555
FACSIMILE (803) 771-8010

July 11, 2008

VIA HAND DELIVERY

Charles L.A. Terreni, Esquire
Chief Clerk and Administrator
PSC
101 Executive Center Drive
Columbia, SC 29210

RECEIVED
2008 JUL 11 PM 4:11
SO FURNISH SERVICE
BY DELIVERY

RE: Intrastate Universal Service Docket No. 97-239-C

Dear Mr. Terreni:

Enclosed please find the original and ten (10) copies of United Telephone Company of the Carolinas d/b/a Embarq's Reply to Return to Motion to Dismiss and Response to Motion Requesting Review of Additional Issues together with a Certificate of Service in above. By copy of this letter I am serving all parties of record.

Please return a clocked copy of the enclosed pleading and certificate of service with my courier. If you or counsel for the parties have questions, please do not hesitate to contact me.

Sincerely,

ELLIOTT & ELLIOTT, PA



Scott Elliott

SE/jcl

Enclosures

c: Parties of Record w/enc.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 1997-239-C

IN RE:)
)
Proceeding to Establish Guidelines for an)
Intrastate Universal Service Fund)
_____)

2008 JUL 11 PM 1:12
RECEIVED
PUBLIC SERVICE
COMMISSION

UNITED TELEPHONE COMPANY OF THE CAROLINAS D/B/A EMBARQ
REPLY TO RETURN TO MOTION TO DISMISS AND
RESPONSE TO MOTION REQUESTING REVIEW OF ADDITIONAL ISSUES

United Telephone Company of the Carolinas d/b/a Embarq (hereinafter “Embarq”) respectfully submits its Reply to the Return to the Motion to Dismiss filed by South Carolina Cable Television Association, CompSouth, tw telecom of south carolina, llc and NuVox Communications (hereinafter “CLECs”) on July 3, 2008 and its Response to the accompanying Motion Requesting Review of Additional Issues. As set forth below, Embarq supports the Motion to Dismiss filed by the South Carolina Telephone Coalition (hereinafter “SCTC”) and objects to the Motion Requesting Review of Additional Issues filed by CLECs.

I. Introduction

On June 27, 2007, the Commission issued an Order requiring that the cost studies used in the calculation of the Universal Service Fund be updated.¹ Parties filed briefs and comments in response to that order during July 2007. On May 23, 2008 the Commission issued a Notice of Hearing setting a hearing date and a separate letter setting testimony filing dates. In that Notice, the Commission described the scope of the proceeding as “to

¹ *In re: Proceeding to Establish Guidelines for an Intrastate Universal Service Fund (USF)*, Order Addressing Cost Studies and Administrative Issues, Order No. 2007-422 in Docket No. 1997-239-C.

update the methodology for performing costs studies for the South Carolina Universal Service Fund.”² After the Notice of Hearing was issued, a conference call was held in which the parties discussed revising the procedural schedule to allow the submission of comments and reply comments regarding the issues to be addressed in pre-filed testimony and at the hearing. Subsequently, SCTC filed its Motion to Dismiss the proceeding on June 20, 2008. Embarq filed a letter in support of that Motion on June 25, 2008. On July 3, 2008, CLECs filed a Return to the Motion opposing the SCTC’s request for dismissal and including a Motion asking the Commission to expand the scope of the proceeding to review additional issues relating to the state USF beyond what the Commission identified in Order No. 2007-422 and the May 23, 2008 Notice of Hearing. Embarq respectfully submits this Reply and Return in Response to the CLECs’ filing.

II. Argument

1. As SCTC argues in its Motion to Dismiss, there is no need for the Commission to conduct a proceeding at this time to revisit USF cost studies. The Commission’s rules, which were upheld in their entirety by the South Carolina Supreme Court, provide a clear point for the filing of updated cost studies before a company can implement more than one-third of its company-specific funding requirement. As SCTC stated in its Motion to Dismiss, this cost study update process is already working as intended. (See, SCTC Motion to Dismiss at par. 7) In addition, distributions from the fund are far below the maximum amount of the fund established by the Commission, so it is clear that companies are not over-recovering from the fund today and that the Commission’s rules are sufficient to ensure against any over-recovery. (See, SCTC Motion to Dismiss at par.

² See, Notice of Hearing and Pre-file Testimony Letter in Docket No. 1997-239-C issued May 23, 2008. Embarq notes that a Notice suspending the scheduled dates pending Commission action on the SCTC’s Motion to Dismiss and the CLECs’ Motion to Review Additional Issues was issued July 10, 2008

13 and Embark's June 25, 2008 letter in support of SCTC's Motion) Therefore, there is no need to conduct a separate review of the companies' cost studies and the proceedings scheduled to consider updates of the cost studies should be dismissed.³

2. Should the Commission deny SCTC's Motion to Dismiss and decide to continue with this proceeding, the CLECs' Motion Requesting Review of Additional Issues should be denied and the proceeding should be limited to the scope set forth in Order No. 2007-422 and the May 23, 2008 Notice of Hearing.

3. The CLECs' Return and Motion raise the same arguments the South Carolina Cable Television Association and others have repeatedly raised in opposition to the establishment and implementation of the state USF since this docket was first opened. These arguments have been rejected again and again by the Commission and the courts, most recently by the South Carolina Supreme Court. The Commission should not accede to the CLECs' request to revisit these issues yet again in this proceeding.

4. The arguments made by the CLECs in their Motion are based on mistaken facts and the CLECs' apparent misunderstanding of the Commission's USF orders. Contrary to the CLECs' statements, the ILECs comply with the Commission's reporting requirements and the ORS properly fulfills its role as the administrator of the fund. In addition, companies are receiving the appropriate amount of support in accordance with the Commission's orders and rules.

5. The genesis of this proceeding was a suggestion by the South Carolina Cable Television Association and others that "stale cost information" could be resulting in Carriers of Last Resort ("COLRs") recovering too much support from the state Universal

³ As stated in its June 25, 2008 letter, Embark supports the Commission's consideration on an expedited basis of the administrative issues raised by the Office of Regulatory Staff.

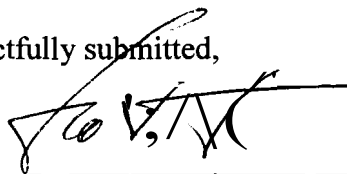
Service Fund ("USF").⁴ The scope of this proceeding (if any proceeding is determined to be necessary), should be limited to that narrow question.

6. That question should be easy to answer. COLRs are not over-recovering from the fund. In 2007, the total size of the USF could be no more than \$340 million. In 2007, total receipts from the fund were approximately \$54 million. COLRs are receiving less than 16% of the USF support for which they are eligible. In addition, USF support represents nothing more than dollar-for-dollar reductions in intrastate access and other non-basic local service rates to remove implicit subsidies for basic local service.

III. Conclusion

The Commission should grant the SCTC's Motion to Dismiss, because the Commission's rules provide ample opportunity to review any company's cost study when appropriate to prevent over-recovery from the state Universal Service Fund. If the Commission denies SCTC's Motion and decides to continue with this proceeding, the Commission should also deny CLECs' Motion to Review Additional Issues. Instead, the Commission should restrict the scope of the proceeding as set forth in Order No. 2007-422 and the May 23, 2008 Notice of Hearing.

Respectfully submitted,



Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205
803-771-0555
803-771-8010
selliott@elliottlaw.us

⁴ See Submission of South Carolina Cable Television Association, CompSouth, Time Warner Telecom of South Carolina, LLC and Nuvox Communications Incorporated Regarding Which USF Issues Should Be Addressed, filed April 3, 2007, in response to Commission Directive dated March 7, 2007, at page 3.

CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of Embarq's Reply to Return to Motion to Dismiss and Response to Motion Requesting Review of Additional Issues, in Docket No. 97-239-C on behalf of United Telephone Company of the Carolinas d/b/a Embarq on all below listed parties to this proceeding by depositing a copy addressed to each in the United States Mail, first-class postage prepaid.

Sonia Daniels, Regulatory Specialist
AT&T Communications of the Southern States
Southern Region - AT&T External Affairs
1230 Peachtree, 4th Floor
Atlanta, GA, 30309

Margaret M. Fox, Esquire
McNair Law Firm, P.A.
P. O. Box 11390
Columbia, SC 29211

Patrick Turner, Counsel
AT&T Companies
1600 Williams Street
Suite 5200
Columbia, SC, 29201

John F. Beach, Counsel
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC, 29202

Anthony Mastando,
Senior Manager/Regulatory Attorney
ITCDeltaCom Communications
7037 Old Madison Pike, Suite 400
Huntsville, AL, 35806

M. John Bowen Jr., Counsel
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC, 29211

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC, 29211

Faye A. Flowers, Counsel
Parker Poe Adams & Bernstein, LLP
Post Office 1509
Columbia, SC, 29202

RECEIVED
2008 JUL 11 PM 4:12
SC PUBLIC SERVICE
COMMISSION

Steven W. Hamm, Esquire
Richardson Plowden Carpenter
& Robinson, P.A.
P.O. Drawer 7788
Columbia, SC, 29202

Bonnie D. Shealy, Counsel
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC, 29202

Frank R. Ellerbe III, Counsel
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC, 29202

Robert E. Tyson Jr., Counsel
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC, 29211

Zel Gilbert, Director External Affairs
Embarq
1122 Lady Street, Suite 1050
Columbia, SC, 29201

William R.L. Atkinson, Counsel
Sprint Nextel Corporation
233 Peachtree Street, N.E.
Suite 2200
Atlanta, GA, 30303

Stan J. Bugner
State Director/Regulatory & Government Affairs
Verizon Telecommunications, Inc.
1301 Gervais Street, Suite 825
Columbia, SC, 29201

Benjamin P. Mustian, Counsel
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC, 29202

John M.S. Hoefer, Counsel
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC, 29202-8416

Ross Allen Buntrock, Counsel
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street, Seventh Floor
Washington, DC, 20005

Susan B. Berkowitz, Sr. Mgr./Regulatory Attorney
Women's Shelter
SC Appleseed Legal Justice Center
P.O. Box 7187
Columbia, SC, 29202

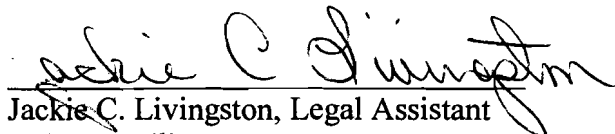
John J. Pringle, Jr., Counsel
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC, 29202

Burnet R Maybank, III , Counsel
Nexsen Pruet, LLC
Post Office Box 2426
Columbia, SC, 29202

J. Phillips Carver, Counsel
AT&T
675 West Peachtree St., N.E.
Atlanta, GA 30375

Susan S. Masterton, Counsel
Embarq
1313 Blair Stone Road
Tallahassee, FL 32301

This 11th day of July, 2008.


Jackie C. Livingston, Legal Assistant
Elliott & Elliott, PA
721 Olive Street
Columbia, SC 29205
803-771-0555